

EXHIBIT 9

Phillip Low

Boulder, CO

January 14, 2006

1

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF DELAWARE

LP MATTHEWS, LLC,)
Plaintiff,)
v.)
BATH & BODY WORKS, INC.;) CASE NO.:
LIMITED BRANDS, INC.;) 04-CV-01507 SLR
KAO BRANDS CO. (f/k/a THE)
ANDREW JERGENS COMPANY);)
and KAO CORPORATION,)
Defendants.)

DEPOSITION OF PHILLIP LOW

Saturday, January 14, 2006

Reported by:

Craig L. Knowles, CM

Henderson Legal Services
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	6		8
1	PROCEEDINGS:	1	Q. Okay. Before that, school?
2	-----	2	A. Before that I was in school.
3	Whereupon,	3	Q. Did you graduate from high school?
4	PHILLIP LOW,	4	A. I did.
5	called for examination by counsel for Defendants	5	Q. Any college?
6	and, having been previously duly sworn to the	6	A. None.
7	truth, the whole truth and nothing but the truth,	7	Q. Any technical training?
8	was examined and testified further upon his oath	8	A. Nope.
9	as follows:	9	Q. It's my understanding that you are the man
10	-----	10	who had the idea to use orange in a cleaning
11	EXAMINATION BY COUNSEL FOR DEFENDANT	11	composition, is that true?
12	BATH & BODY WOKS and LIMITED BRANDS	12	A. That's true.
13	BY MR. WARD:	13	Q. Can you tell me how that came about, how'd
14	Q. Good morning, Mr. Low.	14	you get that idea?
15	A. Good morning.	15	A. I was installing windows, and when you
16	Q. My name is John Ward, I'm with Ward & Olivo	16	install windows, you have polyurethane type
17	in New York, and I represent Limited Brands and	17	sealants that you use, two-part. And you get it
18	Bath3 & Body Works in this action.	18	all over your hands.
19	Have you ever been deposed before?	19	Q. Tell me, what --
20	A. Yes.	20	A. Nothing really cleans it off.
21	Q. Would you tell me what were the	21	Q. Take me through the process. So you are
22	circumstances of that?	22	installing a window.
	7		9
1	A. It was a building lawsuit.	1	A. Right.
2	Q. Were you the plaintiff?	2	Q. You've got a frame. Run us through it.
3	A. We were.	3	A. Well, you have a window opening. You take
4	Q. How did it turn out?	4	out the wood sashes. It depends how the window is
5	A. We won.	5	measured, how the new system is going to go in.
6	Q. Good. Just so you know, you know, I'm	6	You are from the east, right?
7	going to ask a series of questions, you'll answer.	7	Q. Yes. You can tell, huh?
8	You can't nod or make sounds that the court	8	A. You have a lot of wood windows, a lot of
9	reporter can't record for us.	9	historic looking products, right.
10	And any time you feel like you'd like to	10	Q. Yes, indeed.
11	take a break, say the word.	11	A. Okay. What we will do is, we will take out
12	A. Okay.	12	the wooden sashes, leave the buck frame in. Then
13	Q. What do you do for a living?	13	what we do is, we have a system that is
14	A. I have a home improvement and construction	14	historically replicated to cap over all of the old
15	company.	15	wood on the outside. And it's a new window frame
16	Q. How long have you had that?	16	that goes in on the inside and has new sashes and
17	A. Ten years.	17	everything else. Then we seal up the outside, sort
18	Q. What did you do before that?	18	of a panning system out there. We seal up the
19	A. I was a subcontract window installer.	19	panning system to make it weather tight. We put
20	Q. Do you recall how long you were doing that	20	trims on the inside and seal that up to make it
21	for?	21	weather tight.
22	A. Yeah, I have been doing that since 1979.	22	Q. All right.

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<p style="text-align: right;">82</p> <p>1 like to take a quick look at with you, all right?</p> <p>2 On Column 1, if you flip over, it's the</p> <p>3 second page. Do you see at the top there are</p> <p>4 column numbers?</p> <p>5 A. Okay.</p> <p>6 Q. Running down the center there are line</p> <p>7 numbers. So I will try to direct you to the</p> <p>8 general area, all right?</p> <p>9 A. All right.</p> <p>10 Q. Down at line 50 there is a paragraph that</p> <p>11 begins, Orange oil. Do you see that?</p> <p>12 A. Yes.</p> <p>13 Q. The first sentence says, "Orange oil as a</p> <p>14 natural product derived from the rind of oranges</p> <p>15 has been recognized in the past to have some</p> <p>16 cleaning capabilities."</p> <p>17 Any idea what that is referring to?</p> <p>18 A. No.</p> <p>19 Q. And then the last sentence of that same</p> <p>20 paragraph, it reads, "Rather, efforts in the past</p> <p>21 have been directed to the combination of orange oil</p> <p>22 with other cleaning solvents to produce floor</p>	<p style="text-align: right;">84</p> <p>1 me. My mother-in-law, my wife, my brother-in-law.</p> <p>2 Q. Were you aware of any other people involved</p> <p>3 in these tests?</p> <p>4 A. I know Doug had some people, but I don't</p> <p>5 know who they were.</p> <p>6 Q. You see right below that there is sample 1,</p> <p>7 sample 2, sample 3. Do you see those?</p> <p>8 A. Yes.</p> <p>9 Q. Did you have any involvement in preparing</p> <p>10 those samples?</p> <p>11 MR. BURATTI: Objection. Form. Vague.</p> <p>12 A. Yes, I had some involvement in preparing</p> <p>13 these samples.</p> <p>14 BY MR. WARD:</p> <p>15 Q. All right. What was it?</p> <p>16 A. You know, I was the cheerleader, so to</p> <p>17 speak.</p> <p>18 Q. There's nothing wrong with that?</p> <p>19 A. Come on, Doug, let's try another one.</p> <p>20 Q. Was it you or Doug who actually made these</p> <p>21 samples?</p> <p>22 MR. BURATTI: Objection to form.</p>
<p style="text-align: right;">83</p> <p>1 cleaners, glass cleaners and the like."</p> <p>2 A. Where are you at?</p> <p>3 Q. Sorry about that. 61. The last sentence</p> <p>4 in that same paragraph.</p> <p>5 A. Rather. Okay.</p> <p>6 Q. Just read that.</p> <p>7 (Witness examines document.)</p> <p>8 A. Okay.</p> <p>9 BY MR. WARD:</p> <p>10 Q. Any idea what that is referring to?</p> <p>11 A. No.</p> <p>12 Q. Flip the page. Let's go to Column 3, okay?</p> <p>13 Take a look at, it's line 14. There is a sentence</p> <p>14 that begins "A test group." Do you see that?</p> <p>15 A. Yes.</p> <p>16 Q. It says, "A test group of ten persons, male</p> <p>17 and female, were selected to subjectively evaluate</p> <p>18 the results of these samples."</p> <p>19 Do you remember the test group?</p> <p>20 A. Well, that would have been my -- I don't</p> <p>21 know all ten. I just know that there are some that</p> <p>22 I had doing it. Rob Kelly, a guy that worked for</p>	<p style="text-align: right;">85</p> <p>1 A. Doug had the chemistry. It was Doug,</p> <p>2 primarily.</p> <p>3 BY MR. WARD:</p> <p>4 Q. Flip the page one more time. Let's go to</p> <p>5 Column 6, all right? Go down to line 56. There is</p> <p>6 a paragraph that starts there, it starts with "From</p> <p>7 these tests." Do you see that?</p> <p>8 A. Yes.</p> <p>9 Q. All right. Why don't you read it into the</p> <p>10 record and then you'll have gotten up to speed.</p> <p>11 A. "From these tests applicants concluded that</p> <p>12 with respect to cosmetics composition according to</p> <p>13 the present invention could have as little as five</p> <p>14 percent by volume of orange oil, although it was</p> <p>15 preferable to have a cleaning composition having at</p> <p>16 least 25 percent by volume of orange oil."</p> <p>17 MR. BURATTI: And you are entitled to read</p> <p>18 more of that document if you would like to because</p> <p>19 of the statement from the test --</p> <p>20 A. To determine whether the moisturizers had</p> <p>21 any effect on the composition --</p> <p>22 MR. BURATTI: Actually -- you can read as</p>

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	86		88
1	much as you want.	1	one percent level?
2	THE WITNESS: I can read as much as I want?	2	A. I don't remember.
3	MR. BURATTI: The paragraph refers to tests	3	MR. BURATTI: Objection.
4	in the patent, I just wanted to alert you, you are	4	THE WITNESS: Sorry. I'll slow down for
5	allowed to read more to get up to speed.	5	you.
6	THE WITNESS: Okay.	6	MR. BURATTI: Objection to form.
7	MR. BURATTI: You don't have to. You can	7	MR. WARD: The reporter will catch up with
8	hear the question first.	8	us. Don't worry.
9	THE WITNESS: Roll with the question.	9	MR. AUCHTER: It's not fair to the
10	BY MR. WARD:	10	reporter.
11	Q. Do you remember how you came up with that	11	BY MR. WARD:
12	five percent figure?	12	Q. Let's go to Column 9. Just a quick
13	MR. BURATTI: Object to the form.	13	question. The last page. Do you see line 4,
14	A. Well, as I said earlier, we took from	14	Claim 1 starts on line 4.
15	probably 50 percent orange oil down to maybe even	15	A. Okay.
16	one percent and found -- found it worked for what	16	Q. Do you want to read that to yourself?
17	we needed it to work.	17	A. Okay.
18	And with respect to cosmetics, it would	18	Q. Claim 1 discloses a composition that has
19	have had to do with the burning of my wife's	19	three ingredients.
20	eyelids.	20	MR. BURATTI: Objection. Sorry.
21	BY MR. WARD:	21	BY MR. WARD:
22	Q. That is when the orange oil --	22	Q. The first ingredient is identified as
	87		89
1	A. There was too much.	1	between 5 and 60 percent by volume orange oil. The
2	Q. There was too much orange oil in that	2	second ingredient is a pharmaceutically acceptable
3	initial sample?	3	moisturizer and the third ingredient is an
4	A. Right.	4	emulsifying agent. Do you see that?
5	MR. BURATTI: Objection. Vague.	5	A. Well, you had me read section 4. That
6	BY MR. WARD:	6	doesn't say that at all.
7	Q. Do you remember was that a 50 percent	7	Q. I said starting with line 4.
8	sample?	8	A. That is number 4, isn't it? Oh, sorry.
9	A. I don't believe that was 50, no. But I	9	Q. That's okay.
10	can't -- I don't remember what percentage that was.	10	(Witness examines document.)
11	Q. You said you went down all the way to	11	A. It's pretty much mumbo jumbo to me. What
12	one percent?	12	do you want to know?
13	A. We went almost down to nothing and then	13	BY MR. WARD:
14	back up to see where the effect started in.	14	Q. I want to know for each of these
15	Q. Was it your conclusion that the effects	15	ingredients, we will go through them one at a time,
16	started in at five percent?	16	whether it was your idea, Greenspan's idea or a
17	MR. BURATTI: Objection misleading.	17	joint idea. Okay?
18	A. As far as any conclusions, I didn't come to	18	The first idea is five percent to
19	any conclusions, all I was after was my specific	19	60 percent orange oil?
20	target was for caulking. Me personally.	20	MR. BURATTI: Objection. Calls for a legal
21	BY MR. WARD:	21	conclusion.
22	Q. Sure. Do you remember what happened at the	22	A. That would have been between the two of us.

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<p>118</p> <p>1 A. I can't be certain that the events leading 2 to this letter would have preempted my decision to 3 walk away.</p> <p>4 BY MR. BAXTER:</p> <p>5 Q. Maybe I misphrased my question. I'm not 6 asking you if the things in this letter were -- 7 would have preempted your decision to walk away, 8 I'm saying especially these items little 3 and 9 little 4, the preemptive rights and the voting 10 rights, were they part of your decision to walk 11 away?</p> <p>12 MR. BURATTI: Same objections.</p> <p>13 A. I can't be certain.</p> <p>14 MR. BAXTER: Okay. Could we just take a 15 couple-minute break?</p> <p>16 MR. AUCHTER: Absolutely.</p> <p>17 (Recess.)</p> <p>18 MR. BAXTER: Mr. Low, I have no further 19 questions at this time. Thank you.</p> <p>20 THE WITNESS: Oh, great.</p> <p>21 MR. BURATTI: Can we take a couple-minute 22 break?</p>	<p>120</p> <p>1 REPORTER'S CERTIFICATE 2 I, Craig L. Knowles, a Notary Public 3 within and for the State of Colorado, do hereby 4 certify that previous to the commencement of the 5 examination, the witness was duly sworn by me to 6 testify the truth.</p> <p>7 I further certify that this transcript 8 was taken in shorthand by me at the time and place 9 herein set forth and was thereafter reduced to 10 typewritten form and that the foregoing constitutes 11 a true and correct transcript of the proceedings 12 had.</p> <p>13 I further certify that I am not related 14 to, employed by, nor of counsel for any of the 15 parties or attorneys herein, nor otherwise 16 interested in the result of the within action.</p> <p>17 In witness whereof, I have affixed my 18 signature this 20th day of January, 2006</p> <p>19</p> <p>20 Craig L. Knowles, CM 21 Notary Public.</p> <p>22 My Commission Expires June 25, 2006</p>
<p>119</p> <p>1 MR. BAXTER: Yes. Go ahead. Take your 2 break.</p> <p>3 (Recess.)</p> <p>4 (Continued without omission on page 126 of 5 the Business Confidential transcript.)</p> <p>6 (Whereupon, at 12:20 p.m., the taking of the 7 instant deposition ceased.)</p> <p>8</p> <p>9</p> <p>10 PHILLIP LOW</p> <p>11</p> <p>12 SUBSCRIBED AND SWORN to before me this _____ day 13 of _____, 2006.</p> <p>14</p> <p>15</p> <p>16 Notary Public</p> <p>17 My Commission Expires: _____</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>	